No. 358. 124

JAN 9 1902
JAMES H. McKENNEY,
Clerk.

Brief of Patterson for D. C.

IN THE SUPREME COURT OF THE UNITED STATES AT WASHINGTON, D. C.

Filed Jan. 9, 1902.

The Mexican Central Railway Company, Limited,
Plaintiff in Error,

VERSUS

J. W. Eckman, as Guardian for Alfonso Huesselmann,
Defendant in Error.

NO. 358.

ERROR TO THE UNITED STATES CIRCUIT COURT,
WESTERN DISTRICT OF TEXAS.

Brief for Defendant in Error ~~on Motion to Advance~~.

MILLARD PATTERSON,
Attorney for the Defendant in Error,
J. W. ECKMAN, Guardian, Etc.

PATTERSON & ORR, PRINTERS.

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Brief for Defendant in Error on Motion to Advance

STATEMENT.

The defendant in error, J. W. Eckman, as Guardian of the person and estate of Alfonso Huesselman, alleged in his petition in this cause that he and his ward are resident citizens of El Paso County, Texas, and of the Western District of Texas, and that the Mexican Central Railway Company, Limited, is a Railway

corporation duly incorporated under the laws of and a citizen of the State of Massachusetts, doing business in El Paso County, Texas, and that it owns and operates a line of railway from the City of Mexico, in the Republic of Mexico, to and into El Paso County, Texas, and carried on the ordinary business of a railway company as a common carrier of goods and passengers for hire, and that the said J. W. Eckman was duly appointed Guardian of the person and estate of the said Alfonso Huesselman, who is a minor, by the County Court of El Paso County, Texas, at the March term, 1900, thereof, and that under said appointment he duly qualified by taking the oath and giving bond as required by law. The said J. W. Eckman then proceeded to set out at length his cause of action, and in his said petition he pleaded various sections from various codes in force in the Republic of Mexico, which said laws showed that a cause of action for the injuries complained of existed in the Republic of Mexico.

The plaintiff in error interposed two pleas to the jurisdiction of the Circuit Court in and for the Western District of Texas to hear and determine this controversy. One of said pleas is as follows: "That Alfonso Huesselman, at the time of filing this suit and now being a minor, under 21 years of age, and his father and mother both being now alive, and at the time of filing this suit, and now being residents, citizens and inhabitants of the state of Illinois, and never having been residents, citizens and inhabitants of the State of Texas, nor of the Western District of Texas, and that therefore the residence and citizenship of the minor would be that of his father and mother, and hence this court would have no jurisdiction."

The other plea was that the Mexican Central Railway Company, Limited, being incorporated under the laws of the State of Massachusetts, and at the time of filing this suit, and now being a resident, inhabitant and citizen of said State of Massachusetts, and never having been incorporated under the laws of the State of Texas, and was not at the time of filing this suit a resident, inhabitant or citizen of the State of Texas, or of the Western District of Texas, and therefore the Circuit Court had no jurisdiction.

To these pleas the defendant in error interposed a demurrer, which was sustained by the trial court, and the points certified to this court are as follows:

"That the said J. W. Eckman being Guardian of the person and estate of the said Alfonso Huesselmann at the time of the filing of this suit, and being now such, and being a resident, inhabitant and citizen of the State of Texas, and of the Western District of Texas, now and at the time of the filing of this suit, has this court the jurisdiction to try said cause, and does the citizenship of said Guardian, J. W. Eckman, confer jurisditcion on this court, or does the citizenship of the minor and his parents control so as to defeat the jurisdiction of this court.

Whether or not this court has jurisdiction to try and determine this suit under the laws of Mexico as pleaded and proven in this case, in so far as such laws give rights to be determined by successive suits, give the right to extraordinary indemnity, the social position of the injured party, and in so far as the same are vague, indefinite and dissimilar to the laws of our country and controlled by our policy.

Where plaintiff's cause of action arose in the Republic of

Mexico, and the rights are to be determined by said Republic, and where defendant has continuously kept its property and operated its road in said Republic, has this court jurisdiction to hear and determine this cause in the absence of reasons shown in the pleading or proof why plaintiff did not bring his suit in the Republic of Mexico.

Upon the proposition that the citizenship of the Guardian and not that of his Ward controls the question of jurisdiction, we cite the following authorities:

In the case of Coal Co. v. Blatchford, 11 Wallace, 172, being a suit by trustees, Mr. Justice Field, in delivering the opinion, says: "Executors and trustees suing for others benefit form no exception to this rule. If they are personally qualified by their citizenship to bring suit in the Federal Courts, the jurisdiction is not defeated by the fact that the parties whom they may represent may be disqualified. This has been repeatedly adjudged." Further on in the opinion Mr. Justice Field cites the case of Osburn v. The Bank of the United States, 9 Wheat. 738, and says: "The Chief Justice laid it down in that case as a universal rule, that in controversies between citizens of different states, the jurisdiction of the Federal Courts depended not upon the relative situation of the parties concerned in interest, but upon the relative situation of the parties named in the record."

In the case of Insurance Co. v. Rhoads, 119 U. S. 237, Mr. Chief Justice Waite, delivering the opinion of the court, says: "That the jurisdiction depends upon the citizenship of the administrator and not on that of the intestate."

In the case of Pennington v. Smith, 78 Fed. Rep. 399, the court holds that "a testamentary trustee, or a special Guardian

appointed under a State statute for the sale of infants' land, suing in either capacity, is not a mere Guardian ad litem or next friend, and the Federal courts have jurisdiction of a suit brought by him against a citizen of a state other than his own." And the court says further: "Whether complainant be regarded as a testamentary trustee under the will, or a special Guardian under the will, or as a special Guardian under the New Jersey statute for the sale of infants' real estate, he is certainly not a mere Guardian ad litem, or next friend, as in the cases cited by the appellee, and it is on his citizenship, not on that of those whom he represent, that the jurisdiction of the Federal courts must depend;" citing Coal Co., v. Blatchford, 11 Wallace, 172.

In the case of Harper v. Norfolk & M. R. Co., 36 Fed. Rep. 102, the court says: "But apart from the legal right conferred by statute on the administrator to bring this suit, is he in anywise a party in interest? Is he not liable as administrator for the costs of this action in the event of his failure to recover, and for attorney's fees to those he has employed to bring this suit? In the event of the death of the widow and children the amount recovered would be assets in the hands as administrator for disposal according to law. If he succeeds in this action and collects the money of the defendant and fails to pay the same to the parties entitled thereto, clearly he will be liable on his official bond therefor. This distinction of the class of cases relied on by the defendant, and the case at bar, is very clearly drawn in Coal Co. v. Blatchford, 11 Wallace 172. It is scarcely necessary for the court to refer to the cases of Chappedelaine v. Dechenaux, 4 Cranch. 306; Childress v. Emory & McCleug. Wheat. 642; Osburn v. Bank, 9 Wheat. 738; Rice v. Houston, 13 Wallace 66.

In all of these cases it is clearly decided that the jurisdiction depends not on the relative situation of the parties concerned in interest, but on the relative situation of the parties named in the record," citing Coal Co. v. Blatchford, 11 Wallace 172.

The court is of the opinion that the plaintiff, by virtue of his citizenship, has a right to resort to the jurisdiction of this court. This right is conferred by the constitution and the laws of the United States. That he is not deprived of it by the Virginia Statute, vesting in him, and in him alone the legal right to bring this action, the demurrer to the plea must be sustained."

In the case of Popp v. C. H. & D. Ry. Co., 96 Fed. Rep. 465, the court holds that the citizenship of the administrator controls the question of jurisdiction, and not that of the parties for whom he was administrator. The court says: "The plaintiff, in the opinion of the court, is not a mere nominal party. She is a real party so far as the prosecution of the suit is concerned. It is not a case where the suit is being prosecuted in the name of somebody else, or the party actively conducting the litigation is doing so in the name of the estate, in the interest of a next friend, or the like, but it is a case where the administratrix is the active party in the prosecution of the suit, who instituted it, carries it on, and with the sanction of the court may compromise or dismiss it. She has absolute control of, and is responsible for the conduct of the case," citing many authorities.

In the case of Secomb v. Wurster, 83 Fed. Rep. 860, the courts says: "In controversies between citizens of different states the jurisdiction of the Federal Courts depends not upon the relative situation of the parties concerned in interest, but upon the relative situation of the parties named in the record. If the

parties plaintiff are personally qualified by their citizenship to bring suit in the Federal Courts, the jurisdictson is not defeated by the fact that the parties whom they represent may be disqualified," citing Coal Co. v. Blatchford, 11 Wallace 172.

Article 2623 of the Revised Statutes of Texas provides as follows: "The Guardian of the estate is entitled to the possession and management of all property belonging to the ward, to enforce all obligations in his favor, to bring or defend suits by or against him."

Article 2627 of the Revised Statutes of the State of Texas provides: "The guardian of the estate shall use due diligence to collect all claims or debts owing to the ward, and to recover possession of all property to which the ward has a title or claim, provided there is a reasonable prospect of collecting such claims or debts, or of recovering such property, and if he neglects to use such diligence, he and his sureties shall be liable for all damages occassioned by such neglect."

The foregoing authorities, we believe, establish beyond controversy that the citizenship of the guardian controls the question of jurisdiction, and not the citizenship of the ward.

As to the other question, that is, the jurisdiction of the court of an action against the Mexican Central Railway Campany, for an injury occurring in the Republic of Mexico, we cite the court to the case of Evey v. Mexican Central Railway Co., 81 Fed. Rep. 294, where the question is thoroughly discussed by the Circuit Court of appeals sitting at New Orleans, and in which case the same laws that appear in the record in this case are discussed and construed, and the court in that case holds that the Circuit Court for the Western District

of Texas has jurisdiction of a case exactly like the case at bar, and in the Evey case the court cites several case from our Supreme Court. And the Circuit Court of Appeals at New Orleans expressly repudiates the doctrine announced by the Supreme Court of Texas in the case of Railway Co. v Jackson, 33 S. W. Rep. 857. The same question of jurisdiction came up before the Circuit Court of Appeals for the Fifth Circuit at New Orleans in the case of Mexican Central Railway Co. v. Marshall, 91 Fed. Rep. 833, in which the court again reviews the Mexican laws, and holds that the circuit Court in and for the Western District of Texas, had jurisdiction. In the Marshall case last above cited, the Mexican Central Railway Co presented its petition for a writ of error to the United States Supreme Court, which was denied April 11th, 1899.

And the same is again held in the case of Ry. Co. v. Glover 107 Fed. Rep 356, where the same Mexican laws are discussed, and the court holds that the Circuit Court in and for the Western District of Texas had jurisdiction of a cause of action against the Mexican Central Railway Company, Limited, arising in the Republic of Mexico.

We respectfully submit to the court that the judgement of the lower court should be affirmed.

Millard Patterson
Attorney for Defendant in Error
J. W. Eckman, Guardian etc.

No. 124.

Office Supreme Court U. S.
FILED
DEC 6 1902
JAMES H. MCKENNEY
Clerk.

Brf. of Patterson for D.

IN THE SUPREME COURT OF THE UNITED STATES.

Filed Dec. 6, 1902.

The Mexican Central Railway Company, Limited,
Plaintiff in Error,

VERSUS

J.W. Eckman, as Guardian for Alfonso Huesselmann,
Defendant In Error.

NO. 124

CERTIFIED CASE.

ERROR TO THE UNITED STATES CIRCUIT COURT,
WESTERN DISTRICT OF TEXAS.

BRIEF FOR DEFENDANT IN ERROR.

MILLARD PATTERSON,
Attorney for the Defendant in Error,
J. W. ECKMAN, Guardian, Etc.

ELLIS BROS. PRINTERS EL PASO

INTRODUCTION.

This was an action brought in the United States Circuit Court, W. D. T., at El Paso, Texas, by J. W. Eckman, a citizen of Texas, against the Mexican Central Railway Company, Limited, (a corporation;) a citizen of Massachusetts, for damages for injuries occurring in the Republic of Mexico through the negligence of said company to Alfonso Huesselmann, a minor, said Eckman suing as Guardian of said minor. The suit resulted in a verdict and judgment in favor of said Guardian for $12,000.00.

The case is brought into this court as a certified case under Section 5 of the Act of March 3rd, 1891, and the questions certified are to be found on pages 78 and 79 of the printed transcript.

OBJECTIONS.

The defendant in error objects to the consideration of the questions certified for the following reasons:

(1) "At defendant's request the questions arising upon its 'plea in abatement' and 'amended plea of privilege' to be sued in the State of its residence, and 'its seven exceptions or pleas to the jurisdiction,' and 'its exception to the action of the trial court in instructing a verdict' for plaintiff," are certified. This is too general and involves a review of the whole case, and there is no statement showing in itself how any specific question arises. This court will not review the whole case upon numerous certified questions, or pass upon mere questions of fact; and, as the certificate shows that it covers matters of fact as well as of law and covers the whole case, particularly in so far as the exception to the action of

the court in instructing a verdict is concerned, it ought not to be considered.

(2) Defendant in error objects particularly to the consideration of the third question (page 79 of the printed transcript) for the reason that the same is purely abstract and hypothetical, and is not a question of jurisdiction. There is no pretence that the trial court determined this case under the laws of Mexico "in so far as such laws give rights that may be determined by successive suits, or in so far as they allow extraordinary indemnity, or in so far as they are vague, indefinite and dissimilar to the laws of our country and contrary to our policy."

(3) Defendant in error objects particularly to the consideration of the fourth question (page 79 of the printed transcript) for the reason that the same is purely abstract and hypothetical, and is not a question of jurisdiction. It is not intimated or pretended that the trial court held that the rights of plaintiff below were to be determined by the laws of Mexico. It is apparent that the laws of Mexico were pleaded simply to show that upon the cause of action set up plaintiff below had a right of action in Mexico, and the action being transitory he also had a right of action for the wrong complained of in the United States.

(4) Defendant in error objects to the consideration of the fifth question (page 79 of the printed transcript) for the reason that the same is purely abstract and hypothetical, and is not a question of jurisdiction. There is no pretence that the trial court found in this case that the acts complained of were in violation of the criminal laws of Mexico, or that defendant was guilty of a crime, or that such a finding was necessary before civil liability could be established, or that the rights of plaintiff below were adjudicated upon the criminal laws of said Republic.

STATEMENT.

The defendant in error (plaintiff below) alleged in his petition that by the laws of Mexico, which were in force at the time and place of the happening of the injuries complained of through defendant's negligence, the minor, Huesselmann, had a right of action against defendant for his damages. (Printed Trans. p. 66). Portions of the Federal Constitution of Mexico and of the Federal Penal Code, and of the Civil Code and of the Acts of Congress of Mexico were plead with the utmost fullness to show that the plaintiff had a right of action for the wrong complained of in Mexico on account of the civil liability of the defendant. (Printed Trans. pp. 66 to 71 inclusive.) The defendant below, after its plea in abatement was held insufficient, and after its plea of privilege was overruled, filed what it terms "seven pleas or exceptions to the jurisdiction". These "pleas or exceptions" are to be found on pages 75 and 77 inclusive of the printed transcript, and they amount to nothing more than mere exceptions or demurrers to the plaintiff's petition, and, as shown by the certificate of the trial judge, they were all overruled. In the certificate of the trial court the following language appears: "Defendant's seven pleas to the jurisdiction of the court were duly heard by the court, and after hearing the same, and all of them were by the court overruled, to which ruling of the court defendant then and there, in open court, and while the jury were in the box, duly excepted." (See Printed Trans. p. 117.) Neither the charge of the trial court to the jury, nor the measure of damages given by the trial court to the jury are shown in the record, or in the certificate of the trial court, and the verdict and judgment themselves show that the trial court did not dispose of the case upon any such theories or questions as are presented in the third, fourth and fifth questions certified, and found on page 79 of the printed transcript, but tried it and dis-

posed of it just as as any other action of the same nature arising any where would be tried and disposed of.

If this court should see fit to consider the questions as certified, then we respectfully submit the following:

The first question certified is this: "That Alfonso Huesselmann, at the time of the filing of this suit, and now, being a minor under 21 years of age, and his father and mother both being now alive and at the time of the filing of this suit, and now, being residents, citizens and inhabitants of the State of Illinois and never having been residents, citizens and inhabitants of the State of Texas, nor of the Western District of Texas, and the defendant, the Mexican Central Railway Company, Limited, being incorporated under and by virtue of the laws of the State of Massachusetts and at the time of the filing of this suit, and now, being a resident, inhabitant and citizen of said State of Massachusetts and never having been incorporated under the laws of the State of Texas and was not at the time of the filing of this suit a resident and inhabitant and citizen of the State of Texas; or of the Western District of Texas, that said J. W. Eckman being guardian of the person and estate of said Alfonso Huesselmann at the time of the filing of this suit and being a resident, inhabitant and citizen of the State of Texas, and of the Western District of Texas, and now, at the time of the filing of this suit, has this court jurisdiction to try said case and does the citizenship of said guardian, J. W. Eckman, confer jurisdiction on this court or does the legal citizenship of the minor and his parents control so as to defeat the jurisdiction of this court?"

Upon the proposition that the citizenship of the guardian and not that of his ward controls the question of jurisdiction, we cite the following authorities:

In the case of Coal Co. v. Blatchford, 11 Wallace; 172, being a

suit by trustees, Mr. Justice Field, in delivering the opinion says: "Executors and trustees suing for others benefit form no exception to this rule. If they are personally qualified by their citizenship to bring suit in Federal Courts, the jurisdiction is not defeated by the fact that the parties whom they may represent may be disqualified. This has been repeatedly adjudged." Further on in the opinion Mr. Justice Field cites the case of Osburn v. The Bank of the United States, 9 Wheat. 738, and says: "The Chief Justice laid it down in that case as a universal rule, that in controversies between citizens of different states, the jurisdiction of the Federal Courts depended not upon the relative situation of the parties concerned in interest, but upon the relative situation of the parties named in the record."

In the case of Insurance Co. v. Rhoads, 119 U. S. 237, Mr. Chief Justice Waite, delivering the opinion of the court, says: "That the jurisdiction depends upon the citizenship of the administrator and not on that of the intestate."

In the case of Pennington v. Smith, 78 Fed. Rep. 339, the court holds that "a testamentary trustee, or a special Guardian appointed under a State statute for the sale of infant's land, suing in either capacity, is not a mere Guardian ad litem or next friend, and the Federal courts have jurisdiction of a suit brought by him against a citizen of a state other than his own." And the court says further: "Whether complainant be regarded as a testamentary trustee under the will, or a special Guardian under the will, or as a special Guardian under the New Jersey statute for the sale of infant's real estate, he is certainly not a mere Guardian ad litem, or next friend, as in the cases cited by the appellee, and it is on his citizenship, not on that of those whom he represents, that the jurisdiction of the Federal courts must depend;" citing Coal Co., v. Blatchford, 11 Wallace, 172.

In the case of Harper v. Norfolk & M. R. Co., 36 Fed. Rep. 102, the court says: "But apart from the legal right conferred by statute on the administrator to bring this suit, is he in anywise a party in interest? Is he not liable as administrator for the costs of this action in the event of his failure to recover, and for attorney's fees to those he has employed to bring this suit? In the event of the death of the widow and children the amount recovered would be assets in the hands as administrator for disposal according to law. If he succeeds in this action and collects the money of the defendant and fails to pay the same to the parties entitled thereto, clearly he will be liable on his official bond therefor. This distinction of the class of cases relied on by the defendant, and the case at bar, is very clearly drawn in Coal Co. v. Blatchford, 11 Wallace 172. It is scarcely necessary for the court to refer to the cases of Chappedelaine v. Dechenaux, 4 Cranch. 306; Childress v. Emory, 8 Wheat. 642; Osburn v. Bank, 9 Wheat. 738; Rice v. Houston, 13 Wallace 66. In all of these cases it is clearly decided that the jurisdiction depends not on the relative situation of the parties concerned in interest, but on the relative situation of the parties named in the record," citing Coal Co. v. Blatchford, 11 Wallace 172: "The court is of the opinion that the plaintiff, by virtue of his citizenship, has a right to resort to the jurisdiction of this court. This right is conferred by the constitution and the laws of the United States. That he is not deprived of it by the Virginia Statute, vesting in him, and in him alone the legal right to bring this action, the demurrer to the plea must be sustained."

In the case of Popp v. C. H. & D. Ry. Co., 96 Fed. Rep. 465, the court holds that the citizenship of the administrator controls the question of jurisdiction, and not that of the parties for whom he was administrator. The court says: "The plaintiff, in the opinion of the court, is not a mere nominal party. She is a real

party so far as the prosecution of the suit is concerned. It is not a case where the suit is being prosecuted in the name of somebody else, or the party actively conducting the litigation is doing so in the name of the estate, in the interest of a next friend, or the like, but it is a case where the administratrix is the active party in the prosecution of the suit, who instituted it carries it on, and with the sanction of the court may compromise or dismiss it. She has absolute control of, and is responsible for the conduct of the case," citing many authorities.

In the case of Secomb v. Wurster, 83 Fed. Rep. 860, the court says: "In controversies between citizens of different states the jurisdiction of the Federal Courts depends not upon the relative situation of the parties concerned in interest, but upon the relative situation of the parties named in the record. If the parties plaintiff are personally qualified by their citizenship to bring suit in the Federal Courts, the jurisdiction is not defeated by the fact that the parties whom they represent may be disqualified," citing Coal Co. v. Blatchford, 11 Wallace 172.

Article 2623 of the Revised Statutes of Texas provides as follows: "The Guardian of the estate is entitled to the possession and management of all property belonging to the ward, to enforce all obligations in his favor, to bring or defend suits by or against him."

Article 2627 of the Revised Statutes of the State of Texas provides: "The guardian of the estate shall use due diligence to collect all claims or debts owing to the ward, and to recover possession of all property to which the ward has a title or claim, provided there is a reasonable prospect of collecting such claims or debts, or of recovering such property, and if he neglects to use such diligence, he and his sureties shall be liable for all damages occasioned by such neglect."

The foregoing authorities, we believe, establish beyond controversy that the citizenship of the guardian controls the question of jurisdiction, and not the citizenship of the ward.

We have insisted and still insist that all of the other questions which are certified by the trial court are not really questions of jurisdiction at all, but present for consideration nothing but mere matters of so-called policy.

The second question submitted is substatially the same as the first but even if it differs from the first at all it presents no question of jurisdiction. And by this second question, and the third, fourth and fifth, this court is called upon to pass upon, not the question of the jurisdiction of the U. S Circuit Courts, but a mere question of policy; that is, whether or not said courts should recognize and try suits brought for injuries occurring in the Republic of Mexico, or whether said courts should arbitrarily close their doors against such suits. Every question of policy, and every question of any other nature that arises in the case as far as certified has been heretofore fully discussed and disposed of by the U. S. Circuit Court of Appeals at New Orleans, in the case of Evey vs. The Mexican Central Railway Company, Limited, 81 Fed. Rep. p. 294, and in this case determined by said U. S. Circuit Court of Appeals at New Orleans identically the same laws that appear in the record in this case are discussed and construed, and said court holds that the Circuit Court for the Western District of Texas should recognize a case exactly like the one at bar and should proceed and try the same.

The very same question came before the Circuit Court of Appeals for the the Fifth Circuit at New Orleans in the case of the Mexican Central Railway Company vs. Marshall, 91 Fed. Rep. p. 833, in which said court again reviewed the Mexican laws and held that the Circuit Court in and for the Western District of

Texas should recognize its jurisdiction and proceed to try the case, and in the Marshall case last above cited the Mexican Central Railway Company, Limited, presented its petition for a writ of certiorari to the United States Supreme Court, (No. 730, Mexican Central Railway Company Limited vs. A. M. Marshall,) which petition was denied in April 11th, 1899, and in said petition for certiorari said Mexican Central Railway Company, Limited, presented for consideration the very matters that are presented in this case now as certified. The same questions came up again before the U. S. Circuit Court of Appeals at New Orleans in the case of the Mexican Central Railway Company, Limited, against Glover 107 Fed. Rep. page 356, where the same Mexican laws are discussed and the same holding adhered to, and it is asserted as a proposition beyond controversy that the Circuit Court in and for the Western District of Texas has jurisdiction of such a cause of action against the Mexican Central Railway Company, Limited, arising in Republic of Mexico.

We will not weary this court with an argument about these matters, which even the Supreme Court of Texas calls matters of policy, and we deem it sufficient to refer to the opinion and conclusive argument of the U. S. Circuit Court of Appeals at New Orleans in the case of Evey vs. The Mexican Central Railway Company, Limited, cited above. This case is also reported in the 52 U. S. Appeals at page 118. From the Statement of the Evey case as made by the Circuit Court of Appeals, this court will see that the identical question (question of policy) were presented for the consideration of the court at New Orleans that are now presented for this court's consideration, and that court in disposing of the Evey case says "Our courts either have jurisdiction of the class of cases we are discussing, or they have not, and the question of whether a man has voluntarily resorted to our courts or

been forced into them, or whether commerce between Mexico and Texas will be injured or protected by compelling the payment by a corporation of damages for the wrongs it has inflicted or the condition of our dockets, can have no weight or force in determining jurisdiction. These are considerations that may possibly address themselves to the notice of Legislatures but not to the determination of courts. Courts are not at liberty to assume or decline jurisdiction upon speculative grounds or for reasons of public policy."

"We are not willing to subscribe to the doctrine that a citizen of Texas who has suffered wrongs transitory in their nature in a foreign country at the hands of one who has his legal domicile in this State, before he can obtain redress at the hands of our courts must show that he has been refused aid in the foreign courts and make it appear that he comes to the courts of this country unwillingly and as a last resort. Jurisdiction of a cause should not be made to depend upon any such circumstance."

Respectfully submitted,

Mellard Patterson

Attorney for the Defendant in Error.